

Protection of Privacy

One of the exceptions to rights of access, referred to earlier, states that records may be withheld when disclosure would result in “an unwarranted invasion of personal privacy” (section §7(2)(b)).

Unless otherwise deniable, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy when identifying details are deleted, when the person to whom a record pertains consents in writing to disclosure, or then upon presenting reasonable proof of identity, a person seeks access to records pertaining to him or her.

How to Obtain Records

Subject matter list

As noted earlier, each agency must maintain a “subject matter list.” The list is not a compilation of every record an agency has in its possession, but rather is a list of the subjects or file categories under which records are kept. It must make reference to all records in possession of an agency, whether or not the records are available. You have a right to know the kinds of records agencies maintain.

The subject matter list must be compiled in sufficient detail to permit you to identify the file category of the records sought.

Regulations

Each agency must adopt standards based upon general regulations issued by the committee. These procedures describe how you can inspect and copy records. The committee will provide a copy of its regulations request.

Designation of records access officer

Under the regulations, a records access officer (or officers) must be appointed to coordinate an agency’s response to public requests for records. The records access officer is responsible for keeping the subject matter list up to date, assisting you in identifying records sought, making the records promptly available or denying access, providing copies of records or permitting you to make copies, certifying that a copy is a true copy and, if the records cannot be found, certifying either that the agency does not have possession of the requested records or that the agency does have the records, but they cannot be found after diligent search.

The regulations also state the public shall continue to have access to records through officials who have been authorized previously to make information available.

Requests for Records

An agency may ask you to make your request in writing. The law merely requires you to “reasonably describe” the record in which you are interested (section §9(3)). The responsibility of identifying and locating records sought rests to an extent upon the agency. However, if possible you should supply dates, titles, file designations, or any other information that will help to find requested records.

Within Twenty business days of the receipt of a written request for a record reasonably described, the agency must make the record available, deny access in writing giving the reasons for denial, or furnish a written acknowledgement of receipt of the request and a statement of the approximate date when the request will be granted or denied.

Fees

Copies of records must be made available on request. Except when a different fee is prescribed by statute, an agency may not charge for inspection, certification or search for records, or charge in excess of 25 cents per photocopy up to 9 by 14 inches (section §7(1)(b)(iii)). Fees for copies of other records may be charged based upon the actual cost of reproduction.

If an agency has no photocopying equipment, a transcript of records must be made on request. However, you may be charged for the clerical time involved.

Denial of access and appeal

A denial of access must be in writing, stating the reason for the denial and advising you of your right to appeal to the head or governing body of the agency or the person designated to hear appeals by the head or governing body of the agency. You may appeal within 30 days of denial.

Upon receipt of the appeal, the agency head, a governing body or appeals officer has 10 business days to fully explain in writing the reasons for further denial of access or to provide access to the records. Copies of all appeals and the determination thereon must be sent by the agency to the Committee on Open Government (section §9(4)(a)). This requirement will enable the committee to monitor compliance with law and intercede when a denial of access may be improper.

You may seek judicial review of a final agency denial by means of a proceeding initiated under Article 78 of the Civil Practice Law and Rules. When a denial is based upon one of the exceptions to rights of access that were discussed earlier, the agency has the burden of proving that the record sought falls within one or more of the exceptions (section §9(4)(b)).

A new provision in the Freedom of Information Law permits a court, in its discretion, to award reasonable attorney's fees when a person challenging a denial of access to records in court substantially prevails. To award attorney's fees, a court must find that the record was of "clearly significant interest to the general public" and that the agency "lacked a reasonable basis at law for withholding the record." While a court may award attorney's fees, such an award is not mandatory.